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Objection Date: October 3, 2008

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	:	Chapter 11
	:	
In re:	:	Case Nos. 08-13555(JMP)
	:	
LEHMAN BROTHERS HOLDINGS	:	(Jointly Administered)
INC., et. al.,	:	
	:	
Debtor.	:	
	:	

MSTD, INC.,’S OBJECTION TO DEBTOR’S PROPOSED CURE AMOUNT

MSTD, Inc. (hereinafter “MSTD”), hereby objects to the Debtor’s Proposed Cure Amount and in support thereof states as follows:

BACKGROUND

1. MSTD provides certain services to Lehman Commercial Paper Inc.¹, pursuant to an Application Service Provider Agreement (the “Agreement”). Pursuant to the Agreement, MSTD provides Applications, Maintenance and Support, as well as Development Services.

2. On September 15, 2008, (the “Petition Date”), Lehman Brothers Holdings Inc. (the “Debtor”) filed for bankruptcy protection with the United States Bankruptcy Court for the Southern District of New York pursuant to Chapter 11 of Title 11 of the United States Code.

¹ MSTD reserves the right to further object to the assumption of its Agreement on the grounds that the Agreement is with Lehman Commercial Paper, Inc., a non-debtor entity.

3. On September 17, 2008, the Debtor filed the Motion to (A) Schedule a Sale Hearing; (B) Establish Sales Procedures; (C) Approve a Break-Up Fee; and (D) Approve the Sale of the Purchased Assets and the Assumption and Assignment of Contracts Relating to the Purchased Assets [D.I. # 60] (hereinafter the “Sale Motion”). A hearing was held on the Sale Motion on September 19, 2008 and an Order was issued approving the sale to the Purchaser on the same date.

4. On or about September 18, 2008, the Debtor filed a list of contracts proposed to be assumed and assigned to the Purchaser as well as a proposed cure amount (the “Assumption List”). The Sale Order approved the assumption and assignment of the contracts but preserved any disputes over cure amounts.

5. The Agreement with MSTD is listed on the Debtors’ Assumption List with a \$0.00 cure amount. This amount is incorrect. Attached hereto as Exhibit A is a spreadsheet summarizing the amounts owed under the Agreement. Specifically, as of September 15, 2008, no less than \$461,269.03 was due and owing to MSTD.²

ARGUMENT

6. Section 365 of Title 11 of the Bankruptcy Code provides that the trustee or debtor may assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. §365(a).

7. Prior to the Court’s approval of the assumption of a contract, the Court must require the Debtor and/or its assignee to pay the correct pre-petition and post-petition amounts due. *See*, 11 U.S.C. §365(b)(1)(A)&(B).

² On September 24, 2008, MSTD received a payment in the amount of \$433,569.06 thus leaving a balance owed of \$27,699.97. However, it is unclear whether the Debtor intends to honor this payment in light of the bankruptcy proceedings and therefore, MSTD reserves the right to seek payment in the amount of \$461,269.03 as a cure payment.

8. It is true that generally the Bankruptcy Code authorizes a debtor, with the Court's approval, to assume or assign executory contracts or unexpired leases. However, if the debtor has defaulted under the executory contract, it may not be assumed until all defaults are cured, the debtor compensates the non-debtor party for any actual pecuniary loss resulting from the default and provides the non-debtor party adequate assurance of future performance under such executory contract or lease. *See* 11 U.S.C. § 365(b).

9. Accordingly, for the Debtor to assume or assign the Agreement with MSTD, the Debtor or the Purchaser, must pay MSTD the total amount due and owing under the Agreement and as amounts continue to accrue on a daily basis, any other sums that become due prior to the assumption and assignment of the contract.

CONCLUSION

WHEREFORE, for the reasons stated above, MSTD objects to the relief requested by the Debtor and seeks an Order compelling the Debtor or the Purchaser to pay the full amount owed to MSTD as a cure payment, and that the Court grant such other and further relief as deemed just and proper.

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